

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

SOCIETY OF THE HOLY
TRANSFIGURATION MONASTERY,
INCORPORATED,

Plaintiff,

v.

ARCHBISHOP GREGORY OF
DENVER, COLORADO,

Defendant.

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Civil Action No. 07-12387RGS

AFFIDAVIT OF BISHOP JOHN

1. I have previously provided Declarations in support of Archbishop Gregory, which appear before the Court as Documents 77 and 88. I provide this present affidavit also in support of Archbishop Gregory regarding additional information that will be useful to the Court presiding over this controversy. The factual information gathered together in this affidavit is the result of my personal knowledge and perceptions.
2. Let me first say, that the allegations in this lawsuit against Archbishop Gregory are very serious matters from a clerical standpoint – which is why I became and am involved in this matter on behalf of the Orthodox Church. Were the factual circumstances giving rise to the allegations other than as I have found them to be, it would have been my duty to take ecclesiastical action against Archbishop Gregory regardless of any outcome before the Court. Archbishop Gregory and I are the only two

bishops of the Genuine Orthodox Church of America. I am equal in rank to him, although he is hierarch of the Church – “first among equals.” Accordingly, pursuant to Church Law, it has been my duty to investigate these accusations against Archbishop Gregory to determine whether violations have occurred that impact the Church – and I have done so. My examination of these matters has allowed me to come to an ecclesiastical determination that the charges brought against Archbishop Gregory by Holy Transfiguration Monastery (“HTM”) are meritless from the standpoint of Church Law. The lawsuit against Archbishop Gregory appears to be simply the most extreme example, but not the instance, where HTM has uncanonically threatened clerics and monastics of the Church so as to wrongly profit from the labors of others, or to otherwise improperly gain power and influence over others, or carry out a vendetta. Understandably, the Court is following its own process and procedures, but what I have learned may be of some use to the Court.

3. Except for portions of the HTM Psalter, prior to HTM filing Document 95, it would be impossible to determine what and what portions of material put up on Archbishop Gergory's website might be the same, similar, or different from what and what portions of material in which HTM claims copyright. For example, just multiplying the number of pages HTM submitted to the Court as works in which it claims copyright by the number of pages submitted to the Court of the small portion of Archbishop Gregory’s website material that HTM claimed contained some (unspecified) infringing material, would generate at least 7,120,966 comparisons. Apart from locations and

comparing portions of the Psalter, that would truly be trying to find a needle in a haystack. Since Document 95 has been filed, it is possible to more specifically examine HTM's claims of infringement.

4. Some of the HTM materials complained of on the website are not identical to the works in which HTM claims copyright. Indeed, in many instances, the materials come from sources other than anything in which HTM could claim authorship. I have reviewed the deposition testimony of Father Peter about where the materials came from that Father Peter posted on Archbishop Gregory's website, and my review is that he is correct in his assessment that no HTM material was knowingly put up on the website by Father Peter or anyone else. In fact, the source material for what Father Peter put up on the website lacked any copyright notice and was by and large materials that have been passed around among Orthodox clergy for decades.
5. HTM has taken ancient Church works that have been translated into the English language by others and then either: 1) claimed copyright outright in that unchanged work of another (perhaps with very minor edits or alterations); or 2) amalgamated several such works – with perhaps some insignificant changes, substitutions, or negligible additions or subtractions – and claimed copyright in that cobbled together product. I will, however, let the Court make up its own mind with examples from the works in dispute in this case.
6. **Regarding HTM's claims to the Octoëchos Work:** Below are a few examples comparing the Octoechos or The Book of Eight Tones published by Adamant Media Corporation as part of its Elibron Classics series and HTM's Octoeccchos. This 1898

Octoechos (ISBN 0-543-77031-1) is a reprint of the edition published in 1898 by J. Davy & sons, London.

(a)

1898 Octoechos	HTM claimed Octoëchos
Thou that didst take to Thyself our form and endure the cross bodily, do save me by Thy resurrection, O Christ the God, as Lover of man.	Thou Who didst take unto Thyself our form and bodily endure the Cross, save me by Thy resurrection, O Christ God, since Thou art the Friend of man.
Having turned the captivity of Zion from deception, do Thou, O Saviour, vivify me also, delivering me from the thralldom of passions.	Having turned the captivity of Sion away from error, do Thou, O Saviour, quicken me also, delivering me from my slavery to the passions.
In the south he that soweth afflictions of fasting with tears, will reap joyful handfuls of nutriment of life eternal.	In the south, he that soweth afflictions and fastings with tears, the same shall reap sheaves of joy of everlasting nourishment.
With the Holy Spirit is the source of the divine treasures; from Him cometh wisdom, intelligence, fear; unto Him appertain praise and glory, honour and dominion.	In the Holy Spirit is there the source of Divine treasures. From Him cometh wisdom, understanding, and fear; to Him is due praise, glory, honour and dominion.
Except the Lord build the house of the soul, in vain do we labour; for but for Him neither deed nor word are accomplished. ---- at page 111.	Except the Lord build the house of the soul, in vain do we labour; for without Him, neither act, nor word is accomplished. ----at page 419, Document 73-39 at 5.

(b) Examples of portions of the Octoëchos work in which HTM claims copyright are also compared with portions of the Service Book of the Holy Orthodox Catholic Church, compiled and translated by Isabel Hapgood (1906):

1906 Hapgood	HTM claimed Octoëchos
By thy cross, O Christ our Saviour, the	By Thy Cross, O Christ our Saviour, the

1906 Hapgood	HTM claimed Octoëchos
<p>dominion of death hath been destroyed and the delusion of the Devil overthrown; the generation of men also, being saved by faith, doth offer unto thee a perpetual song. All things have been illumined by thy Resurrection, O Lord, and Paradise hath been opened once again; and all creation extolling thee doth offer unto thee a perpetual song. I glorify the might of the Father, and of the Son, and of the Holy Spirit I sing the power; the Godhead, undivided, uncreated, the Trinity of one Essence, who reigneth unto ages of ages. ---- at page 581.</p>	<p>dominion of death hath been destroyed, and the deception of the devil hath been abolished; and the race of man, having been saved by faith, doth ever offer praise to Thee. All things have been enlightened by Thy Resurrection, O Lord, and Paradise is opened again. And whilst acclaiming Thee, the whole of creation doth ever offer praise to Thee. I glorify the might of the Father and the Son, and the power of the Holy Spirit do I praise, even the indivisible, uncreated Godhead, the Trinity one in essence, reigning unto eternity for ever. ----at page 138-139, Document 73-35 at 39-40</p>
<p>By thy precious Cross, O Christ, thou didst put to shame the Devil, and by thy Resurrection thou didst dull the sting of sin, and save us from the gates of death: We glorify thee, O Only-begotten One. He who giveth Resurrection to the generation of men was led as a sheep to the slaughter. The Princes of Hell were terrified by him, and the gates of lamentation were lifted up. For Christ, the King of Glory, entered in, saying unto those who were in bonds: Go forth; and to those who were in darkness: Unveil yourselves. ---- at page 584.</p>	<p>By Thy precious Cross, O Christ, Thou hast put the devil to shame; and by Thy Resurrection, Thou hast blunted the sting of sin; and Thou hast saved us from the gates of death. We glorify Thee, O Only-begotten One. He that granted the resurrection unto the race of man was led as a sheep to slaughter; the princes of Hades were terrified of Him, and the grievous gates were lifted up; for Christ, the King of Glory, hath entered, saying to those in bonds: Go forth; and to those in darkness: Reveal yourselves. ----at page 277, Document 73-37 at 23</p>

- (c) Examples of portions of the Octoëchos work in which HTM claims copyright are compared with the Old Jordanville Prayer Book, which was first published in 1960, and is the translation work of the late Archimandrite Lazarus:

Old Jordanville Prayer Book	HTM claimed Octoëchos
Thou hast destroyed death by Thy Cross, Thou hast opened Paradise to the thief. Thou hast changed the lamentation of the Myrrbearers into joy, and Thou hast commanded Thine Apostles to proclaim that Thou, O Christ our God, hast risen and grantest the world the great mercy. ---- at Sunday Troparia and Kontakia, TONE 7.	Thou didst abolish death by Thy Cross; Thou didst open Paradise to the thief; Thou didst transform the myrrh-bearers' lamentation, and didst bid Thine apostles to preach that Thou art risen, O Christ God, granting great mercy to the world. ---- at page 416, Document 73-39 at 2

7. **Regarding HTM's claims to the Dismissal Hymns Work:** When the material posted on Archbishop Gregory's website is compared with the Dismissal Hymns work in which HTM claims copyright, it is evident that about 20 or more hymns are not shared. With respect to the common hymns that appear in both sets of material there are differences ranging from 2 or three words up to 10 or 12 words. The Dismissal Hymns work in which HTM claims copyright duplicates other works that predate even the formation of HTM as an entity. The most striking of these examples is found in comparing the work in which HTM claims copyright with the online Menologia for Every Day of the Church Year, which was translated in the 1960s, and which can be found at http://www.orthodox.cn/saints/menologia/index_en.html. Comparing the Dismissal Hymns work in which HTM claims copyright with the Menologia on the website, the HTM work in its entirety tracks these menologion throughout the year. Yet, these works that I know were created in the 1960s were (as noted on the website) “unofficially published by St. Herman of Alaska Brotherhood of Platina, CA. St. Herman of Alaska Press publishes The Orthodox Word magazine, and also many books. The little

book of Troparia and Kontakia was evidently typewritten and distributed as a photo copy or mimeograph copy, and most likely was not ever for sale. The collection includes many Troparia and Kontakia which were collected originally by Saint John of Shanghai and San Francisco, and was put together by Father Seraphim Rose, and Father Herman, both of whom knew and worked with Saint John before his repose.” Just a few examples (of what could be a voluminous number) appear below.

(a)

St. Herman of Alaska Brotherhood	HTM claimed Dismissal Hymns
Lord of the universe who by Thy power hast established the times and seasons, bless this year with Thy goodness, preserve our rulers and keep Thy flock in peace, through the prayers of the Mother of God, and save us.	O Maker of all creation, Who, by Thine own power, hast established the times and the seasons: Bless the crown of this year with Thy goodness, O Lord, and keep our rulers and Thy flock in peace, by the intercessions of the Theotokos, and save us.
Virgin Mother of God rejoice, Mary full of grace, haven and protection of the human race. The Redeemer of the world became incarnate of thee: thou art ever blessed and glorified. Pray to Christ our God to grant peace to all the world.	Rejoice, Thou who art full of grace, O Virgin Theotokos, haven and protection of the race of man; for the Redeemer of the world became incarnate of thee; for thou alone art both mother and virgin, ever blessed and glorified. Intercede with Christ God that peace be granted unto all the world.
O Symeon, righteous father, thou didst become a pillar of patience, and excel like the forefathers: Job in his sufferings, Joseph in temptation, and in the flesh wert like the bodiless ones. Intercede with Christ our God that He may save our souls.	Thou becamest a pillar of patience and didst emulate the forefathers, O righteous one: Job in his sufferings, Joseph in temptations, and the life of the bodiless ones while in the body. O Symeon, our righteous father, intercede with Christ God that our souls be saved.
* * *	* * *
Creator and Lord of the ages, God of	O Maker and Master of the ages, O God

St. Herman of Alaska Brotherhood	HTM claimed Dismissal Hymns
<p>all, transcendent in essence: Bless this year. Save all who worship and cry: Grant us a fruitful year, O Compassionate Redeemer.</p> <p>The icon of thy holy countenance has appeared out of the waters like an ever-flowing fountain pouring forth streams of healing, O spotless Mother of God.</p> <p>While seeking the kingdom of heaven thou wast united to mankind on earth. Thy pillar was a chariot of fire and thou a companion of angels. O righteous Symeon, intercede with Christ our God for us all.</p> <p>---- September 1.</p>	<p>of all, Who art transcendent in essence, bless the coming year; and of Thy boundless mercy, O Compassionate One, save all who adore Thee, the only Master, and who cry with fear: O Redeemer, grant to all a fruitful year.</p> <p>The most precious icon of thine all-holy countenance hath appeared out of the waters, O spotless one, like an ever-flowing spring which doth pour forth the streams of healings.</p> <p>While seeking things above, thou wast united to things below, and madest thy pillar a chariot of fire; thereby thou becamest a companion of the angels, O righteous one, and intercedest unceasingly with Christ our God for us all.</p> <p>---- September 1, Document 73-29 at 2-3.</p>
<p>Thy Nativity, O Mother of God, has brought joy to all the world; for from thee arose the Sun of Righteousness, Christ our God, Who, having dissolved the curse, has given His blessing, and having abolished death, has granted us life eternal.</p> <p>* * *</p> <p>Joachim and Anna were freed from the reproach of childlessness and Adam and Eve from the corruption of death, O Immaculate One, by thy holy nativity. And thy people, redeemed from the guilt of sin, celebrate thy birth by crying to thee: The barren woman gives birth to the Mother of</p>	<p>Thy nativity, O Theotokos, hath proclaimed joy to the whole world; for from thee hath dawned the Sun of righteousness, Christ our God, annulling the curse, and bestowing the blessing, abolishing death and granting us life everlasting.</p> <p>Joachim and Anna were freed from the reproach of childlessness, and Adam and Eve from the corruption of death, O immaculate one, by thy holy nativity, which thy people, redeemed from the guilt of offences, celebrate by crying to thee: The barren woman giveth birth to the Theotokos, the</p>

St. Herman of Alaska Brotherhood	HTM claimed Dismissal Hymns
<p>God and the nurse of our life. ---- September 8.</p>	<p>nourisher of our life. ---- September 8, Document 73-29 at 13.</p>
<p>The truth of things revealed thee to thy flock as a rule of faith, a model of meekness, and a teacher of temperance. Therefore thou hast won the heights by humility, riches by poverty. Holy Father Nicholas, intercede with Christ our God that our souls may be saved.</p>	<p>The truth of things hath revealed thee to thy flock as a rule of faith, an icon of meekness and a teacher of temperance; for this cause thou hast achieved the heights by humility, riches by poverty. O Father and Hierarch Nicholas, intercede with Christ God that our souls be saved.</p>
<p>Thou wast a faithful minister of God in Myra, O Saint Nicholas. For having fulfilled the Gospel of Christ, thou didst die for the people and save the innocent. Therefore thou wast sanctified as a great initiator of the grace of God.</p> <p>---- December 6.</p>	<p>In Myra, O Saint Nicholas, thou didst prove to be a minister of things sacred; for having fulfilled the Gospel of Christ, O righteous one, thou didst lay down thy life for thy people, and didst save the innocent from death. Wherefore, thou wast sanctified as a great initiate of the grace of God.</p> <p>---- December 6, Document 73-29 at 148.</p>
<p>Thou wast a champion of the First Council and a wonderworker, O Godbearing Father Spyridon. Thou didst speak to one dead in the grave, and change a serpent to gold; and while thou wast chanting the holy prayers the Angels were serving with thee. Glory to Him Who has glorified thee; glory to Him Who has crowned thee; glory to Him Who through thee works healings for all.</p>	<p>Thou wast shown forth as a champion of the First Council and a wonderworker, O Spyridon, our Godbearing father. Wherefore, thou didst speak unto one dead in the grave, and didst change a serpent to gold. And while chanting thy holy prayers, thou hadst angels serving with thee, O most sacred one. Glory to Him that hath glorified thee. Glory to Him that hath crowned thee. Glory to Him that worketh healings for all through thee.</p> <p>* * *</p>
<p>Blessed ascetic of the northern wilds</p>	<p>Blessed dweller of the northern wilds</p>

St. Herman of Alaska Brotherhood	HTM claimed Dismissal Hymns
<p>and intercessor for the whole world; teacher of Orthodoxy, instructor of piety, adornment of Alaska and gladness of America, holy Father Herman, pray to Christ our God that He may save our souls.</p> <p>[NOTE: This hymn also is included in a 1982 publication of The Divine Liturgy by St. Nectarios Press, where copyright of this hymn is claimed by HTM]</p> <p>---- December 12.</p>	<p>and gracious intercessor for the whole world, teacher of the Orthodox Faith, good and most wondrous enlightener, adornment of Alaska and joy of all America: Holy Father Herman, pray to Christ, the King of Glory; that He save our souls</p> <p>---- December 12, Document 73-31 at 7.</p>
<p>From thy mother's womb thou wast sanctified by the Creator in His foreknowledge, and from thy swaddling bands thou wast filled with prophetic wisdom. O wise Jeremiah, thou didst lovingly lament the fall of Israel. Honouring thee as a Prophet and Athlete we cry out to thee: Glory to Him Who has glorified thee; glory to Him Who has crowned thee; glory to Him Who has given thee to us as a fervent intercessor.</p> <p>Thou didst illumine thy fatherland with thy radiant life of prayer and fasting, and wast filled with divine gifts of the Spirit. Thou didst strive valiantly in this temporal life and show mercy to all, becoming an intercessor for the poor. And so we entreat thee, O Father Paphnuti, pray to Christ our God that our souls may be saved.</p>	<p>From thy mother's womb thou wast sanctified by the Creator in His foreknowledge, and from thy swaddling bands thou wast filled with prophetic wisdom. Out of love thou didst lament over the fall of Israel, O wise Jeremias. Hence, we honour thee as a prophet and martyr and we cry to thee: Glory to Christ Who hath glorified thee. Glory to Him that hath crowned thee. Glory to Him that hath granted thee unto us as a fervent intercessor.</p> <p>* * *</p> <p>Having illumined thy fatherland with the brilliance of thy life in prayers and fastings, thou wast filled with the divine gifts of the Spirit. And having contested well in this temporal life, thou didst open unto all in affliction the bowels of mercy and wast an intercessor for the poor. Wherefore, we entreat thee, O Father Paphnutius, to pray Christ God that our souls be saved.</p>

St. Herman of Alaska Brotherhood	HTM claimed Dismissal Hymns
<p>While presenting the divine and bloodless Sacrifice thou didst present thy blood spilled by the Hagarenes as a blameless offering to the Chief Shepherd thy Master. Entreat Him to smite the warlike nations, and thyself strengthen Orthodox Christians in every combat, and keep thy flock unharmed from every affliction; for we honour thee as a strong intercessor, O new Hieromartyr of Russia and Hierarch blessed Macarius.</p> <p>* * *</p>	<p>While celebrating the Divine and Unbloody Sacrifice, thou didst present as a blameless offering to thy Master, the Chief Shepherd, thy blood spilled by the Hagarenes. Entreat Him, we pray thee, to pour out wrath upon the warlike nations; do thou strengthen Orthodox Christians in every combat and keep thy flock unharmed from every affliction; for we honour thee as a mighty intercessor, O new hieromartyr of Russia, holy hierarch, blessed Macarius.</p> <p>* * *</p>
<p>Thy pure heart was enlightened by the Spirit, O great Prophet and Martyr Jeremiah. Thou didst receive the gift of prophecy from on high and cry aloud to the nations: This is our God and there is none other beside Him Who has appeared incarnate on the earth.</p>	<p>Having purified thine enlightened heart with the Spirit, O great prophet and martyr, thou didst receive the gift of prophecy from on high, O glorious Jeremias, and thou didst cry aloud unto all the nations: This is our God, and there is none other save Him, Who hath appeared incarnate on earth.</p> <p>* * *</p>
<p>Illumined by divine Light thou didst lead an ascetic life, O righteous Father. Thou didst excel as a guide of monks and adornment of fasters. God, beholding thy labours, enriched thee with the gift of wonderworking so that thou dost pour forth healings. In gladness we cry to thee: Rejoice, O Father Paphnuti.</p>	<p>Enlightened, O Father, by an outpouring of the divine light, thou didst lead an ascetical life, O righteous one. Thou wast a most excellent guide of monastics and the adornment of fasters. Wherefore, God, having beheld thy labours, enriched thee with the gift of wonderworking, for thou pourest forth healings. And in gladness we cry to thee: Rejoice, O Father Paphnutius.</p>
<p>O blessed Hierarch Macarius, the city of Kiev rejoices, having acquired the treasure of thine incorrupt body; for thou didst guard thy See from the</p>	<p>The city of Kiev rejoiceth, having acquired a treasure, even thine incorrupt body, O blessed hierarch Macarius; for thou didst guard thy see from the</p>

St. Herman of Alaska Brotherhood	HTM claimed Dismissal Hymns
wicked enemies' onslaughts even unto blood, and dost now stand before the heavenly throne. In thy prayers remember us before the Creator, that thou mayest be our refuge in all afflictions; since in thee we boast as we cry: Rejoice, O Macarius, venerable adornment of Bishops. ---- May 1.	onslaughts of wicked enemies even unto blood, and now thou standest before the Heavenly throne. In thy prayers, remember us in the presence of the Creator, O our Father, that we may have thee as a refuge in all afflictions; since in thee do we boast, crying: Rejoice, O Macarius, venerable adornment of bishops. ---- May 1, Document 73-30 at 70.

- (b) Portions of the Dismissal Hymns work in which HTM claims copyright are also compared with the Old Jordanville Prayer Book, which was first published in 1960, and is the translation work of the late Archimandrite Lazarus, and the 1915 Williams & Norgate, The Services for Holy Week and Easter Sunday, available online at <http://www.archive.org/details/theservicesforho00unknuoft> (a likely place for such a genuine copy of this document, which is a good reproduction of the work).

Old Jordanville Prayer Book	HTM claimed Dismissal Hymns
Supreme Leaders of the Heavenly Hosts, we implore you that by your prayers you will encircle us, unworthy as we are, with the protection of the wings of your immaterial glory, and guard us who fall down I before you and fervently cry: Deliver us from dangers, for you are the commanders of the Powers above.	Supreme commanders of the Heavenly hosts, we unworthy ones implore you that by your supplications ye will encircle us with the shelter of the wings of your immaterial glory, and guard us who fall down fervently before you and cry: Deliver us from dangers since ye are the marshalls of the hosts on high. * * *
Supreme Leaders of God's armies and ministers of the divine glory, princes of	Supreme commanders of God and ministers of the Divine Glory, guides of

Old Jordanville Prayer Book	HTM claimed Dismissal Hymns
<p>the bodiless Angels and guides of men, ask what is good for us and great mercy, as Supreme Leaders of the Bodiless Hosts.</p> <p>---- Daily Troparia and Kontakia, Monday, Commemoration of the Holy Angels.</p>	<p>men and leaders of the bodiless hosts: Ask for what is to our profit and for great mercy, since ye are supreme commanders of the bodiless hosts.</p> <p>----November 8, Document 73-29 at 108</p>
<p>The memory of the just is celebrated with hymns of praise, but the Lord's testimony is enough for thee, O Forerunner, for thou wast shown to be more wonderful than the Prophets since thou wast granted to baptize in the running waters Him Whom thou didst proclaim. Then having endured great suffering for the Truth, thou didst rejoice to bring, even to those in hell, the good tidings that God Who had appeared in the flesh takes away the sin of the world and grants us the great mercy.</p> <p>---- Daily Troparia and Kontakia, Tuesday, Commemoration of St. John the Baptist.</p>	<p>The memory of the just is celebrated with hymns of praise, but the Lord's testimony is sufficient for thee, O Forerunner; for thou hast proved to be truly even more venerable than the prophets, since thou wast granted to baptize in the running waters Him Whom they proclaimed. Wherefore, having contested for the truth, thou didst rejoice to announce the glad tidings even to those in Hades: that God hath appeared in the flesh, taking away the sin of the world and granting us great mercy.</p> <p>---- August 29, Document 73-33 at 22.</p>

1915 Williams & Norgate	HTM claimed Dismissal Hymns
<p>The noble Joseph takes down from the Tree Thy Spotless Body, and when he had enwrapped It in fair linen with spices, he laid It for burial in a new sepulchre.</p>	<p>The noble Joseph, taking Thine immaculate Body down from the Tree, and having wrapped It in pure linen and spices, laid It for burial in a new tomb.</p> <p>* * *</p>
<p>The Angel stood by the tomb and cried to the Myrrh-bearing women: Myrrh is fitting for the dead, but Christ has shewn Himself free from corruption.</p>	<p>Unto the myrrh-bearing women did the angel cry out as he stood by the grave: Myrrh-oils are meet for the dead, but Christ hath proved to be a stranger to</p>

1915 Williams & Norgate	HTM claimed Dismissal Hymns
---- at page 209 - 210.	corruption. ----Triodion, Holy and Great Saturday, Document 73-33 at 40.

8. **Regarding HTM's claims to the Pentecostarion Work:** The Pentecostarion work in which HTM claims copyright follows other works that (again) predate the formation of HTM as an entity. Just a few examples appear below; however, the first example is instructive, since this is an example of one of the numerous instances where the website material does not match the works in which HTM claims copyright. In this case, the “Paschal Homily” on Archbishop Gregory's website does not follow the HTM Pentecostarion, but tracks the 1915 Williams & Norgate, The Services for Holy Week and Easter Sunday, available online at <http://www.archive.org/details/theservicesforho00unknuoft> (a likely place for such a genuine copy of this document, which is a good reproduction of the work). Below is a comparison of the Pentecostarion work in which HTM claims copyright copies, the third party website materials and 1915 Williams & Norgate.

(a)

Website Material	1915 Williams & Norgate	HTM claimed Pentecostarion Work
If any be pious and a lover of God, let him delight in this fair and radiant festival. If any be	If any be pious and a lover of God, let him take part in this fair and radiant festival. If any be	Whosoever is a devout lover of God, let him enjoy this beautiful bright festival. And whosoever is

Website Material	1915 Williams & Norgate	HTM claimed Pentecostarion Work
<p>an honest servant, let him come in and rejoice in the joy of his Lord. If any have wearied himself with fasting, let him now enjoy the recompense.</p> <p>If any have worked from the first hour, let him receive today his just reward. If any have come after the third, let him feast with thankfulness. If any have arrived after the sixth, in no wise let him be in doubt; in no way shall he suffer loss. If any be later than the ninth, let him draw nigh, let him not waver. If any arrive only at the eleventh, let him not be fearful for his slowness, for the Master is munificent and receiveth the last even as the first; He giveth rest to him of the eleventh even as to him who hath wrought from the first hour. He is merciful to the last and provideth for the first; and to this one He giveth, and to that one He showeth kindness. He receiveth their labors and acknowledgeth the purpose, and He honoureth the deed and praiseth the intention.</p>	<p>an honest servant, let him come in and rejoice in the joy of his Lord. If any have wearied himself with fasting, let him take part now in the recompense.</p> <p>If any have worked from the first hour, let him receive today his just dues. If any have come at the third, let him feast with thankfulness. If any have arrived at the sixth, in no wise let him be in doubt; in no way shall he suffer loss. If any be later than the ninth, let him draw near, let him not waver. If any arrive only at the eleventh, let him not be fearful for his slowness, for the Master is munificent, and receives the last even as the first. He giveth rest to him of the eleventh, even as to him who has wrought from the first hour. And He is merciful to the last, and provides for the first. And to this one He gives, and to that one He shews kindness. And he receives their labours, and acknowledges the purpose. And he honours the action and praises the intention.</p>	<p>a grateful servant, let him rejoice and enter into the joy of his Lord. And if any be weary with fasting, let him now receive his denarius.</p> <p>If any have toiled from the first hour, let him receive his due reward. If any have come after the third hour, let him with gratitude join in the feast. And he that arrived after the sixth hour, let him not doubt; for he too shall sustain no loss. And if any have delayed to the ninth hour, let him not hesitate, but let him come also. And he that hath arrived only at the eleventh hour, let him not be afraid by reason of his delay; for the Lord is gracious and receiveth the last even as the first. He giveth rest to him that cometh at the eleventh hour, as well as to him that hath toiled from the first. Yea, to this one He giveth, and upon that one He bestoweth. He accepteth works, as He greeteth the endeavour. The deed He honoureth and the intention He commendeth.</p>

Website Material	1915 Williams & Norgate	HTM claimed Pentecostarion Work
Wherefore, enter ye all into the joy of our Lord, and let the first and the second take part in the reward. Ye rich and ye poor, join hands together. Ye sober and ye heedless, do honor to this day.	Wherefore enter ye all into the joy of our Lord, and let the first and the second take part in the reward. Ye rich and ye poor, join hands together. Ye strong and ye heedless, do honour to this day.	Let all then enter into the joy of our Lord. Ye first and last receiving alike your reward; ye rich and poor, rejoice together. Ye sober and ye slothful, celebrate the day.
* * *	* * *	* * *
---- Document, 72-26 - Ex22 - Depo Ex 55, at page 20-21.	---- at 281-282.	----at page 6, Document 73-19 at 7.

- (b) As to other portions of the Pentecostarion Work in which HTM claims copyright, below is a comparison with the 1906 Hapgood:

1906 Hapgood	HTM claimed Pentecostarion Work
Let us purify our senses and we shall behold Christ, radiant with the light ineffable of the Resurrection, and shall hear him say, in accents clear: Rejoice! as we sing the song of victory.	Let us purify our senses and we shall behold Christ, radiant with the unapproachable light of the Resurrection, and we shall clearly hear Him say: Rejoice! as we sing the triumphal hymn.
For meet is it that the heavens should rejoice, and that the earth should be glad, and that the whole world, both visible and invisible, should keep the Feast. For Christ is risen, the everlasting joy!	For meet is it that the Heavens should rejoice, and that the earth should be glad, and that the whole world, both visible and invisible, should keep the feast; for Christ, our everlasting Joy hath arisen.
---- at page 227.	----at Document 73-19 at 3.
Christ revealed himself as of the male sex when he opened the Virgin's womb, and as mortal was called the	Christ revealed Himself as of the male sex when He opened the Virgin's womb, and as a mortal was He called

1906 Hapgood	HTM claimed Pentecostarion Work
<p>Lamb. Without blemish, also, is our Passover, in that he tasted not corruption; and as very God perfect was proclaimed.</p> <p>Christ, the blessed Crown, like unto a yearling Lamb, of his own good will did sacrifice himself for all, a Passover of purification; and from the grave did he, the glorious Sun of Righteousness, shine forth again upon us.</p> <p>---- at page 229.</p>	<p>the Lamb. Thus, without blemish is our Pascha, for He tasted not corruption; and since He is truly God, perfect was He proclaimed.</p> <p>Christ, our blessed Crown, like unto a yearling Lamb, of His own good will did sacrifice Himself for all, a Pascha of purification: and from the grave the beautiful Sun of Righteousness, shone forth again upon us.</p> <p>----at Document 73-20 at 43.</p>

1915 Williams & Norgate	HTM claimed Pentecostarion Work
<p>Let us who have beheld the Resurrection of Christ worship our Holy Lord Jesus, Who is alone without sin. We worship Thy Cross, O Christ, and praise and glorify Thy Holy Resurrection ; for Thou art our God, and we know none other beside Thee, and we call upon Thy Name. Come, all ye faithful, let us worship Christ's Holy Resurrection, for behold, through the Cross joy has come to the whole world. We praise His Resurrection and for ever glorify the Lord. He endured the Cross for us, and by death destroyed Death.</p> <p>---- at page 271.</p>	<p>Let us who have beheld the Resurrection of Christ worship our holy Lord Jesus, Who is alone without sin. We worship Thy Cross, O Christ, and we praise and glorify Thy holy Resurrection. For Thou art our God, and we know none other beside Thee, and we call upon Thy name. Come, all ye faithful, let us worship Christ's holy Resurrection, for behold through the Cross joy hath come to the whole world. Forever blessing the Lord, we praise His Resurrection. He endured the Cross for us, and by death destroyed death.</p> <p>----at Document 73-19 at 9.</p>

9. **Further information regarding HTM's claims to The Psalter Work:** I am aware of statements as early as 1978 that this HTM Psalter was approved by the Synod of ROCOR bishops for use in the Church. Indeed, the first formally published version of the HTM Psalter (printed in 1974) includes the following pronouncement on the same

page as on which appears the copyright notice for the work: “Printed with the blessing of the Holy Synod of Bishops of the Russian Orthodox Church Outside Russia.” As a consequence of HTM's affiliation with ROCOR, and the Synod's approval of the Psalter work, the HTM versions of numerous Psalms have been distributed since before 1978 in numerous and widespread publications of which HTM must have been aware, most of which do not contain any notice of copyright. For additional examples beyond what has already been supplied to the Court, the works described in the accompanying affidavits of Mother Andrea and Bishop Basil, contain many of the Psalms. And this distribution without copyright notice is the case with many other publications distributed by Saint Nectarios Press, including by means of the issues of the Orthodox Christian Witness (for example, Ps. 13:1 in 10/2004 issue, Psalm 117:26 in 9/2006 issue). An additional example to matters already brought to the Court's attention is a 1980 copy of the Divine Liturgy that was put out by Saint Nectarios Press. As with other works so distributed, material in which HTM claims copyright is in that Divine Liturgy, but that distribution by Saint Nectarios Press bears no copyright notice. Furthermore, with regard to the Psalter, a comparison of the work in which HTM claims copyright with numerous preexisting translations shows that the HTM work is not significantly different than an amalgamation of such preexisting works. I can verify and affirm that this was demonstrated to the Court in Document 92, at pages 58 through 80, and that the comparisons and indications of similarities therein are true; but, nonetheless, a fleshed out example would probably be useful to the Court:

(a)

1851 Brenton	HTM claimed Psalm
O Lord, our Lord, how wonderful is thy name in all the earth! for thy magnificence is exalted above the heavens. Out of the mouth of babes and sucklings hast thou perfected praise, because of thine enemies; that thou mightest put down the enemy and avenger. For I will regard the heavens, the work of thy fingers; the moon and stars, which thou hast established. What is man, that thou art mindful of him? or the son of man, that thou visitest him? [and it goes on in like fashion] ---- Psalm 8.	O Lord, our Lord, how wonderful is Thy name in all the earth! For Thy magnificence is lifted high above the heavens. Out of the mouths of babes and sucklings hast Thou perfected praise, because of Thine enemies, to destroy the enemy and avenger. For I will behold the heavens, the works of Thy fingers, the moon and the stars, which Thou hast founded. What is man, that Thou art mindful of him? Or the son of man, that Thou visitest him? [and it goes on in like fashion] ---- at Document 73-1 at 21.

10. **Regarding HTM's claims to the Horologion Work:** The Horologion work, in which HTM claims copyright, duplicates other works that predate even the formation of HTM as an entity. Again, numerous examples could be provided. Many of these would relate to portions of the Psalter already discussed. Only two additional examples are given below, although a multitude is available.

(a)

1851 Brenton Translation of Septuagint	HTM claimed Horologion Work
O Lord, Almighty God of our fathers, Abraham, Isaac, and Jacob, and of their righteous seed; who hast made heaven and earth, with all the ornament thereof; who hast bound the	O LORD Almighty, the God of our Fathers, Abraham, Isaac, and Jacob, and of their righteous seed; Who hast made heaven and earth, with all the ornament thereof; Who hast bound the sea by the

1851 Brenton Translation of Septuagint	HTM claimed Horologion Work
<p>sea by the word of thy commandment; who hast shut up the deep, and sealed it by thy terrible and glorious name; whom all men fear, and tremble before thy power; for the majesty of thy glory cannot be borne, and thine angry threatening toward sinners is importable: but thy merciful promise is unmeasurable and unsearchable;</p> <p>[and it goes on in like fashion]</p> <p>---- Psalm 152.</p>	<p>word ofThy commandment; Who hast shut up the deep, and sealed it by Thy terrible and glorious Name; Whom all things fear, and tremble before the face of Thy power; for the majesty of Thy glory cannot be borne, nor can the wrathfulness of Thy threatening toward sinners be endured: but the mercy ofThy promise is unmeasurable and unsearchable,</p> <p>[and it goes on in like fashion]</p> <p>----at Document 73-8 at 77.</p>

(b)

1906 Hapgood	HTM Horologion Work
<p>More honourable than the Cherubim, and beyond compare more glorious than the Seraphim, thou who without defilement barest God the Word, true Birth-giver of God, we magnify thee. Bless, Father, in the Name of the Lord. Priest. Through the prayers of our holy fathers, have mercy upon us, O Lord Jesus Christ our God. Amen.</p> <p>O Lord, Lord, who deliverest us from all the arrows that fly by day, deliver thou us, also, from all the things that infest the darkness. Accept our evening sacrifice, even the lifting-up of our hands. Grant that we may pass through the course of the night without sin, untempted of evil things; and deliver us from every alarm and cowardice that cometh to us from the Devil.</p>	<p>MORE honourable than the Cherubim, and beyond compare more glorious than the Seraphim, thee who without corruption gavest birth to God the Word, the very Theotokos, thee do we magnify. In the Name of the Lord, Father, bless. The priest: Through the prayers of our holy Fathers, Lord Jesus Christ our God, have mercy on us.</p> <p>O Lord, that hast delivered us from every arrow that flieth by day, do Thou deliver us also from every thing that walketh in darkness. Accept the lifting up of our hands as an evening sacrifice. And vouchsafe us blamelessly to pass through the course of the night, being untempted of evils; and deliver us from every troubling and fear which cometh to us of the devil.</p>

1906 Hapgood	HTM Horologion Work
[and it goes on in like fashion] ---- at page 154-155.	[and it goes on in like fashion] ----at Document 73-8 at 73-74.

11. **Regarding HTM's claims to The Prayer Book Work:** The Prayer Book work, in which HTM claims copyright, is compared with the 1915 Williams & Norgate work, The Services for Holy Week and Easter Sunday, discussed above in reference to paragraph 7, subparagraph b (regarding the Dismissal Hymns work in which HTM claims copyright); and in reference to paragraph 8, subparagraphs a and b (regarding the Pentecostarion work in which HTM claims copyright).

(a)

1906 Hapgood	HTM claimed Prayer Book Work
When thou didst descend into death, O Life Immortal, then didst thou annihilate Hell with the radiance of thy divinity. And when thou hadst raised up the dead from the nethermost regions, all the Powers of heaven cried aloud: O Life-giver, Christ our God, glory to thee! ---- at page 220.	When Thou didst descend unto death, O Life Immortal, then didst thou slay hades with the lightning of Thy Divinity. And when Thou didst also raise the dead out of the nethermost depths, all the Powers in the heavens cried out: O Life-giver, Christ our God, glory be to Thee ----at 192, Document 73-4 at 17.
Let the heavens rejoice and let the earth be glad. for the Lord hath showed strength with his arm; he hath trampled down Death by death; he is become the first-born of the dead; from the womb of Hell hath he delivered us, and unto the world hath he vouchsafed great mercy. ---- at page 581.	Let the Heavens rejoice; let earthly things be glad; for the Lord hath wrought might with His arm. He hath trampled upon death by death; the first-born of the dead hath He become. From the belly of hades hath He delivered us and hath granted great mercy to the world. ----at 123, Document 73-3 at 72.

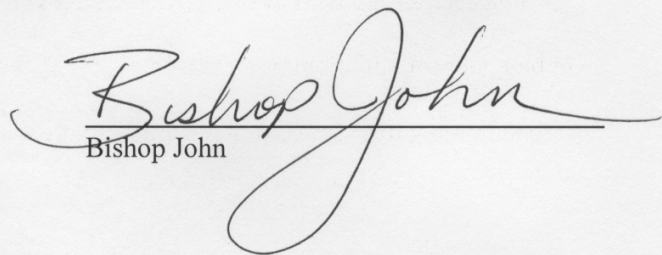
12. More examples of how the works in which HTM is claiming copyright are basically the same as other preexisting works could be provided, but would be repetitive of the points made with the examples above. Additionally, to more precisely supply examples for the Court, additional thousands of pages could easily be put before the Court to establish these points; however, I understand that the Court has requested that the parties refrain from filing additional pages of exhibits or affidavits unless absolutely critical. What has been supplied above is only a small portion of evidence that could be marshaled on these points, but it is exemplary of the kinds of facts available on these matters.
13. Additionally, some points may be useful regarding Orthodoxy and Orthodox monasticism. A monk does not come to a monastery to dedicate his life to a monastery; he dedicates himself to God and the Church.
14. As to joining with the Russian Orthodox Church Outside of Russia (“ROCOR”), when an Orthodox cleric joins an organization, he does so it with the realization that he must obey the rules of that portion of the Church.
15. No one being part of the Church has the authority to publish anything for the benefit of the Church without the approval of the bishop who has jurisdiction over that portion of the Church. The first copyrighted HTM Psalter work shows that HTM published the Psalter with the blessing of the Synod of Bishops of ROCOR. That would not have been given without review and approval of the work in question. The second

copyrighted Psalter work by HTM deletes that blessing – after the point HTM had fled ROCOR jurisdiction.

16. An abbot of a monastery is the person of the monastery who would be in possession of the statutes and regulations of the part of the Orthodox Church to which the monastery is attached. It is unlikely to the point of improbability that the other lower ranks of monastery members would be troubled with knowledge of the those particular rules and regulations of the Church. However, in contrast, every monk is supposed to know the Rudder, the Canons of the Church, especially with the fundamental Canons dealing with monastic life, the bishop and his authority. I have read the statutes and regulations of ROCOR at issue in this case. None of them contradict the Rudder, and in fact the ROCOR statutes and regulations simply implement the preexisting commands and requirements of the Rudder.

Pursuant to 28 U.S.C. § 1746, I declare under the laws of the United States under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 9th day of August, 2010.


Bishop John

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those (if any) indicated as non registered participants on this 6th day of August, 2010.

/s/ Chris L. Ingold
Chris L. Ingold